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# IN THE UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

WELTONIA HARRIS, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

U.S. PHYSICAL THERAPY, INC.,

Defendant.

) Case No. 2:10-cv-1508-JCM-LRL

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## **STIPULATION AND ORDER FOR PROTECTIVE ORDER**

Plaintiffs and Defendant U.S. Physical Therapy, Inc. ("USPT") by and through their attorneys of record, enter into this Stipulation and Order for Protective Order ("Stipulated Protective Order") attached as Exhibit A in order to facilitate settlement discussions and document disclosures and production under the Local Rules of this Court and the Federal Rules

1 of Civil Procedure. As grounds therefore, the parties state that documents or information  
2 containing confidential, personal, private, proprietary and business information and/or trade  
3 secrets are likely to be disclosed or produced during the course of settlement discussions and/or  
4 discovery in this litigation. The Parties, by and through their counsel of record, stipulate and  
5 agree as follows:

6 Documents or information containing confidential, personal, private, proprietary and  
7 business information and/or trade secrets (“Confidential Information”) that bear significantly on  
8 the parties’ claims or defenses is likely to be disclosed or produced during the course of  
9 discovery in this litigation. Counsel for the party or parties receiving Confidential Information  
10 are presently without sufficient information to accept the representation(s) made by the party or  
11 parties producing Confidential Information as to the confidential, personal, private, proprietary,  
12 and/or trade secret nature of such Confidential Information. In order to protect the respective  
13 interests of the parties and to facilitate the progress of disclosure and discovery in this case, the  
14 Parties have signed, and seek the Court’s order confirming, this Stipulation.

15 It is therefore stipulated that:

- 16 1. Documents or discovery responses containing Confidential Information disclosed or  
17 produced by any party in this litigation are referred to as “Protected Documents.”  
18 Except as otherwise indicated below, all documents or discovery responses  
19 designated by the producing party as “Confidential” and which are disclosed or  
20 produced to the attorneys for the other parties to this litigation are Protected  
21 Documents and are entitled to confidential treatment as described below. The party  
22 producing Confidential Information shall mark any documents, materials and  
23 information entitled to protection as “Confidential” in accordance with the provisions  
24 of this Order by affixing a label thereto identifying the documents or materials as  
25 Confidential Information, by using the word “Confidential” or similar language such  
26 as “Proprietary” or “Subject to Protective Order.” The party producing Confidential  
27 Information shall ensure that the marking of documents or materials as “Confidential”  
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1 will not obscure or obstruct any information contained on said documents or  
2 materials, preserving the legibility of all such documents and materials in their  
3 entirety.

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- 5 2. Protected Documents shall not include (a) materials that on their face show that they  
6 have been published to the general public, or (b) documents that have been submitted  
7 to any governmental entity without request for confidential treatment.
- 8
- 9 3. At any time after the delivery of Protected Documents, counsel for the party or parties  
10 receiving the Protected Documents may challenge the Confidential designation of all  
11 or any portion thereof by providing written notice to counsel for the party disclosing  
12 or producing the Protected Documents. If the parties are unable to agree as to  
13 whether the confidential designation of discovery material is appropriate, the party or  
14 parties receiving the Protected Documents shall certify to the Court that the parties  
15 cannot reach an agreement as to the confidential nature of all or a portion of the  
16 Protected Documents. Thereafter, the party or parties disclosing or producing the  
17 Protected Documents shall have fourteen (14) days from the date of certification to  
18 file a motion for protective order with regard to any Protected Documents in dispute.  
19 The party or parties producing the Protected Documents shall have the burden of  
20 establishing that the disputed Protected Documents are entitled to confidential  
21 treatment. If the party or parties producing the Protected Documents do not timely  
22 file a motion for protective order, then the Protected Documents in dispute shall no  
23 longer be subject to confidential treatment as provided in this Order. All Protected  
24 Documents are entitled to confidential treatment pursuant to the terms of this Order  
25 until and unless the parties formally agree in writing to the contrary, a party fails to  
26 timely move for a protective order, or a contrary determination is made by the Court  
27 as to whether all or a portion of a Protected Document is entitled to confidential  
28 treatment.

4. Protected Documents and any information contained therein shall not be used or shown, disseminated, copied, or in any way communicated to anyone for any purpose whatsoever, except as provided for below.
5. Protected Documents and any information contained therein shall be disclosed only to the following persons ("Qualified Persons"):
  - a. Counsel of record in this action for the party or party receiving Protected Documents or any information contained therein;
  - b. Employees of such counsel (including experts and investigators) assigned to and necessary to assist such counsel in the preparation and trial of this action; and
  - c. The Court.
6. Protected Documents and any information contained therein shall be used solely for the purpose of this lawsuit and for no other purpose.
7. The term "copy" as used herein means any photographic, mechanical or computerized copy or reproduction of any document or thing, or any verbatim transcript, in whole or in part, of such document or thing.
8. To the extent that Protected Documents or information contained therein are used in depositions, at hearings, or at trial, such documents or information shall remain subject to the provisions of this Order, along with the transcript pages of the deposition testimony, hearing and/or trial testimony referring to the Protected Documents or information contained therein.
9. When a party files Protected Documents, including confidential portions of any transcript, the party shall file them in sealed envelopes or other appropriately sealed containers on which shall be endorsed the title of this action and a statement substantially in the following form: "Filed Under Seal Pursuant to Protective Order." The envelope or container shall not be opened or released to anyone other than qualified persons without further order of the Court. The Clerk of the Court is hereby

1 directed to maintain such confidential documents, materials, and information in  
2 separate portion of the court files and not available to the public. Any documents and  
3 materials filed under seal shall remain under seal unless the Court, pursuant to motion  
4 by the challenging party, orders that the seal be lifted.

5 10. Any court reporter or transcriber who reports or transcribes testimony in this action  
6 shall agree that all Confidential Information designated as such under this Order shall  
7 remain confidential and shall not be disclosed by them, except pursuant to the terms  
8 of this Order, and that any notes or transcriptions of such testimony (and any  
9 accompanying exhibits) will be retained by the reporter or delivered to counsel of  
10 record.

11 11. Inadvertent or unintentional production of documents or information containing  
12 Confidential Information which are not designated "Confidential" shall not be  
13 deemed a waiver in whole or in part of a claim for confidential treatment.

14 12. The party or parties receiving Protected Documents shall not under any circumstances  
15 sell, offer for sale, advertise, or publicize Protected Documents or any information  
16 contained therein.

17 13. After termination of this litigation, the provisions of this Order shall continue to be  
18 binding, except with respect to those documents and information that become a  
19 matter of public record. This Court retains and shall have continuing jurisdiction over  
20 the parties and recipients of the Protected Documents for enforcement of the  
21 provisions of this Order following termination of this litigation.

22 14. Upon termination of this action by dismissal, judgment, or settlement, counsel for the  
23 party or parties receiving Protected Documents shall return the Protected Documents  
24 (and all copies of such documents including any copies which have been highlighted,  
25 annotated or otherwise altered or marked) to the counsel for the party or parties  
26 disclosing or producing the Protected Documents. The party or parties receiving the  
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Protected Documents shall keep their attorney work product which refers or relates to any Protected Documents.

15. This Order shall be binding upon the parties and their attorneys, successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.

Nothing in this Order will prejudice any party from seeking amendments broadening or restricting the rights of access to and the use of Protected Documents or contesting the designation of Confidential Information or a Qualified Person.

Dated this 18<sup>th</sup> day of February, 2011.

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/s/ Jonathan B. Owens

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Attorneys for Defendant, U.S. Physical Therapy, Inc.

**CONSENTED TO BY:**

MITCHELL D, GLINER, ATTORNEY AT LAW

DATED: February 17, 2011

/s/ Mitchell D. Gliner

MITCHELL D. GLINER, ESQ.

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Attorneys for Plaintiffs

**ORDER FOR PROTECTIVE ORDER**

IT IS SO ORDERED this 25th day of February, 2011.

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U.S. MAGISTRATE JUDGE

Submitted by:  
ALVERSON TAYLOR MORTENSEN & SANDERS

*/s/ Jonathan B. Owens*

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